

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY

&

THE HONOURABLE MRS. JUSTICE K.HEMA

SATURDAY, THE 1ST DECEMBER 2007 / 10TH AGRAHAYANA 1929

MFA.No. 154 of 2002()

**OP(MV).1032/1991 of MOTOR ACCIDENT CLAIMS TRIBUNAL,
KOTTAYAM**

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APPELLANT: APPELLANT/CLAIMANT IN O.P. (M.V)

**PHILIPOSE JAMES, KULATHUMKAL,
VATTAPPALLY, BOAT JETTY ROAD,
CHANGANACHERRY.**

**BY ADV. SRI.M.L.SAJEEVAN
SRI.M.N.SANJITH**

RESPONDENTS: RESPONDENTS/RESPONDENTS:

**1. JOJAN CHACKO, KOCHUKUNNUPURAM,
PALLOM P.O., KOTTAYAM.**

**2. THE ORIENTAL INSURANCE CO. LTD.,
KOTTAYAM.**

BY ADV. SRI.M.JACOB MURICKAN - R2

**THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD
ON 01/12/2007, THE COURT ON THE SAME DAY DELIVERED
THE FOLLOWING:**

J.B.KOSHY & K.HEMA, JJ.

M.F.A.No.154 OF 2002

Dated 1st December, 2007

JUDGMENT

Koshy,J.

Appellant/claimant, a flourishing businessman, met with an accident and sustained very serious injuries. He claimed an amount of Rs.4,49,350/-. The Tribunal calculated a compensation of Rs.2,86,850/=, but, on the basis of contributory negligence amount awarded was only Rs.1,43,425/=. Quantum of compensation and finding of contributory negligence are questioned by the appellant in this appeal. Claimant himself was examined as PW1 and he stated that the accident occurred solely due to the negligence of the first respondent who was riding a scooter. He stated that on 1.1.1991 at about 4 p.m. he stopped his vehicle on the eastern side of the road and crossed the road. When he reached on the western side of the road, the scooter driven by the first respondent came behind and hit the claimant. He fell down on the road and sustained injuries. Ext.A10 F.I.R. shows that the accident occurred due to the negligence of the first respondent rider of the scooter. Ext.A11 is the charge sheet which would prove that after investigation police found that the accident occurred due to the sole negligence of the first respondent rider of the scooter. The Tribunal also found that the actual spot of incident cannot be found out as scene mahazar was not

produced by the appellant as well as respondents even though it was found that width of the road was 7.65 cms. and it was also stated that there was one way traffic in that road where the accident occurred. With regard to the negligence aspect, the only evidence adduced was the examination of claimant himself. No evidence was adduced by the first respondent to show that he was not negligent. Merely on the basis of scene mahazar negligence cannot be presumed. We are of the view that, from the evidence available, the only conclusion possible is that only the rider of the scooter was negligent and not the appellant. Therefore, we set aside the finding of contributory negligence.

2. With regard to the quantum of compensation, the Medical Board assessed disability at 45%. It is also stated that because of the accident his leg was not in a moving condition even after physiotherapy. Ext.A19 is the medical certificate of the medical board assessing 45% disability, but, the Tribunal assessed disability at 30%. It has also come out in evidence that he was a Mechanical Engineer. He was running a mechanical unit from L.G. Thread India Limited. He is also a distributor in diagnostic equipments of the Peeli Enterprises. He has also got Ext.A1 licence issued from the

Factories and Boilers Department. His factory is registered as can be seen from Ext.A2. Ext.A3 is the Automobile Engineering Workshop licence. Ext.A4 certificate shows that he is running a diagnostic agency. Ext.A5 shows that he was a distributor for Alleppey District. His wife is an advocate. The Tribunal after perusing the income tax returns etc. found that his income was between Rs.15,000 – 20,000/= a month. He also stated that he0 participated in the Inter-university competitions earlier and because of the accident he is unable to do the business properly. He was aged 44. It is true that if the amount is calculated on a multiplier method, the amount payable will be very high as his monthly income was very high. If monthly income is very high, it is not necessary that the amount should be calculated on a multiplier method. However, we found that compensation granted for disability was Rs.67,500/= and loss of earning power was Rs.1,50,000/= and we are of the view that on the facts and circumstances of the case compensation granted need not be enhanced. However, since the finding of negligence was taken away, he is entitled to an additional amount of Rs.1,43,425/=. We further note that no amount was granted for pain and suffering. Considering the serious nature of injuries, long hospitalisation etc. we award Rs.10,000/= for pain and suffering. Thus, the appellant is entitled to

an additional amount of Rs.1,53,425/=. The above amount should be deposited by the 2nd respondent insurance company, over and above the decreed amount by the Tribunal, with 7.5% interest from the date of application till its deposit. On deposit of the amount, appellant is allowed to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.HEMA
JUDGE

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